

BILL ANALYSIS

C.S.H.B. 3538
By: Thompson
Corrections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that one of the largest contributors to the high costs of operating and maintaining the corrections system is the aging incarcerated population. Certain reports indicate that over the span of nearly a decade, the number of individuals 55 years of age or older in state and federal prisons grew by almost 80 percent. Some elderly prisoners may cost the prison more because they are plagued with more health conditions, both minor and serious, and are at a heightened risk for chronic health difficulties. In addition, the needs of some of the elderly incarcerated population can be difficult to manage in a correctional setting because of inadequate resources, poor processes, and lack of staff. For these reasons, elderly and seriously ill inmates may use a disproportionate share of the funds allocated for prison health care costs. In addition, some believe that certain elderly prisoners are no longer a threat to the public due to prolonged or chronic conditions that often leave them incapacitated.

Although current Texas statutes provide for medically recommended intensive supervision if an inmate meets certain criteria, the Board of Pardons and Paroles approval rate of such releases remains low. C.S.H.B. 3538 proposes changes relating to the mandatory release of certain inmates on super-intensive supervision parole and medically recommended intensive supervision and to the discretionary release on such medically recommended supervision to address the rising health costs in the correctional system while maintaining public safety.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3538 amends the Government Code to require a parole panel to order the release of an inmate on super-intensive supervision parole not later than the first anniversary of the later of the inmate's initial parole eligibility date computed under applicable statutory provisions or the date the inmate reaches 65 years of age. The bill exempts from this requirement an inmate who is serving a sentence for or has been previously convicted of the following: an offense of continuous sexual abuse of a young child or children or for aggravated sexual assault punishable by a minimum term of 25 years in prison; an offense to which judge ordered community supervision does not apply; an offense of unlawful restraint, indecency with a child, improper relationship between an educator and a student, prohibited sexual conduct, robbery, compelling prostitution, possessing or promoting child pornography, intoxication assault, intoxication manslaughter, coercing, inducing, or soliciting membership in a criminal street gang, or directing activities of certain criminal street gangs; or an offense of engaging in organized criminal activity based on a conspiracy to commit an offense previously specified in this provision.

C.S.H.B. 3538 prohibits a parole panel from releasing an otherwise eligible inmate if the inmate has been the subject of major disciplinary action within the 12-month period preceding the date the inmate would otherwise be eligible for release under the bill's provisions, has been

reclassified by the Texas Department of Criminal Justice (TDCJ) based on the inmate's conduct, obedience, and industry and is in a less favorable classification than was originally determined by TDCJ, or is considered by TDCJ to be at high risk or very high risk of unsuccessful reentry into the community following release from TDCJ. The bill requires the Board of Pardons and Paroles to adopt a policy establishing the date on which a parole panel may reconsider for release an inmate who has previously been denied release because of such major disciplinary action, reclassification, or risks associated with reentering the community and requires the policy to require the parole panel to at least annually reconsider the inmate for release as soon as practicable after each anniversary of the date of denial. The bill requires TDCJ, not later than January 1, 2012, to release on supervision any elderly inmate eligible for mandatory release to super-intensive supervision under the bill's provisions, with respect to whom a parole panel has not denied release on parole.

C.S.H.B. 3538 requires a parole panel to release on medically recommended intensive supervision any inmate, regardless of the inmate's initial parole eligibility date, if on the basis of a medical examination approved by at least two physicians the Texas Correctional Office on Offenders with Medical or Mental Impairments identifies the inmate as having a terminal illness, having a condition requiring long-term care, being in a persistent vegetative state, or having an organic brain syndrome with significant to total mobility impairment. The bill exempts from this requirement an inmate whose condition existed at the time of sentencing and has not deteriorated and an inmate who is serving a sentence for or has been previously convicted of an offense previously specified in the bill's provisions relating to the exemption of certain elderly inmates from mandatory release on super-intensive supervision. The bill requires the office, in cooperation with TDCJ and before releasing an inmate on medically recommended intensive supervision, to prepare for the inmate a medically recommended intensive supervision plan that requires the inmate to submit to electronic monitoring, places the inmate on super-intensive supervision, or otherwise ensures appropriate supervision of the inmate. The bill requires a parole panel releasing an inmate on medically recommended intensive supervision to require as a condition of release that the releasee remain under the care of a physician and in a medically suitable placement. The bill requires the office, at least once each calendar quarter, to report to the parole panel on the releasee's medical and placement status and authorizes the parole panel, on the basis of the report, to modify conditions of release and impose any condition on the releasee that the panel could impose on a parole releasee. The bill requires TDCJ, not later than January 1, 2012, to release on supervision any inmate identified for mandatory release on medically recommended intensive supervision under the bill's provisions. The bill makes the statutory provision requiring the office and the Texas Department of Aging and Disability Services to jointly request proposals from public or private vendors to provide under contract services for inmates released on medically recommended intensive supervision applicable to a request for proposals with respect to mandatory medically recommended intensive supervision release under the bill's provisions.

C.S.H.B. 3538 revises the conditions under which an inmate other than an inmate who is serving a sentence of death or life without parole may be eligible for discretionary release on medically recommended intensive supervision by authorizing the release if the Texas Correctional Office on Offenders with Medical or Mental Impairments, in cooperation with the Correctional Managed Health Care Committee, identifies the inmate as being, among other qualifications and conditions, 65 years of age or older, rather than elderly. The bill further revises the conditions for release eligibility by specifying that the condition requiring identification by the office and the committee that an inmate with a reportable conviction or adjudication under the sex offender registration program is in a persistent vegetative state or has an organic brain syndrome with significant to total mobility impairment is based on a physician's diagnosis of such. The bill adds as a condition that must be met for the discretionary release of such an inmate on medically recommended intensive supervision the approval by a panel of at least two physicians of the inmate's suitability for release on the supervision, based on a medical examination of the inmate.

C.S.H.B. 3538 defines "condition requiring long-term care," "organic brain syndrome,"

"persistent vegetative state," and "terminal illness." The bill makes conforming and nonsubstantive changes.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3538 omits a provision included in the original defining "elderly inmate" as an inmate who is 55 years of age or older. The substitute differs from the original by requiring a parole panel to order the release of an inmate on super-intensive supervision parole not later than the first anniversary of the later of the inmate's initial parole eligibility date or the date the inmate reaches 65 years of age, whereas the original requires that release not later than an elderly inmate's initial parole eligibility date. The substitute differs from the original by exempting from this requirement an inmate who is serving a sentence for or who has been previously convicted of one of the offenses specified by the substitute, whereas the original exempts an elderly inmate who is serving a sentence for one of certain of those specified offenses or is the subject of a major disciplinary action within the 60-day period preceding the inmate's scheduled release date.

C.S.H.B. 3538 differs from the original by prohibiting a parole panel from releasing an otherwise eligible inmate to super-intensive supervision parole if the inmate has been the subject of major disciplinary action within the 12-month period preceding the date the inmate would otherwise be eligible for release under the substitute's provisions, whereas the original specifies such disciplinary action occurring within the 60-day period preceding the inmate's scheduled release date. The substitute contains provisions not included in the original prohibiting a parole panel from releasing an otherwise eligible inmate due to the inmate's reclassification by the Texas Department of Criminal Justice (TDCJ) based on conduct in a less favorable classification than was originally determined for the inmate or to TDCJ's consideration of the inmate's high risk or very high risk of unsuccessful reentry into the community following release.

C.S.H.B. 3538 contains provisions not included in the original defining "condition requiring long-term care," "organic brain syndrome," "persistent vegetative state," and "terminal illness."

C.S.H.B. 3538 differs from the original by exempting from the requirement that a parole panel release any inmate with one of certain medical conditions on medically recommended intensive supervision an inmate whose condition existed at the time of sentencing and has not deteriorated or who is serving a sentence for or has been previously convicted of one of the offenses specified by the substitute, whereas the original exempts from the requirement an inmate who is serving a sentence of death or life without parole.

C.S.H.B. 3538 contains a provision not included in the original making the statutory provision requiring the Texas Correctional Office on Offenders with Medical or Mental Impairments and the Department of Aging and Disability Services to jointly request proposals from vendors to provide under contract services for inmates released on medically recommended intensive supervision applicable to a request for proposals with respect to such supervision under the substitute's provisions.

C.S.H.B. 3538 differs from the original, in the provision revising the conditions under which a certain inmate may be eligible for discretionary release on medically recommended intensive supervision, by requiring the office's identification of the inmate as being 65 years of age or older, whereas the original requires such identification of the inmate as being 55 years of age or older. The substitute differs from the original by revising statutory provisions relating to discretionary release with respect to a certain inmate whom the office identifies as having a medical condition of terminal illness or requiring long-term care, being in a persistent vegetative

state, or having an organic brain syndrome, whereas the original removes those statutory provisions relating to such an identified inmate. The substitute differs from the original, in the condition for eligibility for discretionary release on medically recommended intensive supervision requiring the office to have prepared for the inmate a medically recommended intensive supervision plan, by requiring that plan be prepared in cooperation with the pardons and paroles division of TDCJ, whereas the original requires that the plan be prepared in cooperation with TDCJ itself. The substitute differs from the original in nonsubstantive ways.